

BEFORE THE POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint of Joseph B. Hurwitz and  
Steven G. Kimbell et. al.,  
COMPLAINANTS

Docket No. C99-3

OPPOSITION TO UNITED STATES POSTAL SERVICE'S  
MAY 10, 1999 MOTION TO DISMISS COMPLAINT

Come now Complainants, Joseph B. Hurwitz and Steven G. Kimbell, pro se, to file this memorandum in opposition to the United States Postal Service's (USPS) May 10th Motion to Dismiss, and state that, for the reasons which follow, the motion is entirely without merit and USPS must file an answer pursuant to 39 C.F.R. sec. 3001.84. (Complainants do not object to USPS' second motion of May 10 in which USPS seeks a ten-day extension before filing a full answer in the form and manner required by secs. 3001.9 to 3001.12, and satisfying paragraphs (a), (b), and (c) of sec. 3001.84.)

MEMORANDUM

USPS presents several issues which it falsely believes warrant dismissal of Complainants' Class-action Complaint:

I. The Complaint fails to raise rate, classification, or service issues ... within the meaning of 39 U.S.C. sec. 3662 as implemented by 39 C.F.R. sec. 3001.82.

A. ... The Postal Service shall have as its **basic function** the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and **business correspondence of the people**.... 39 U.S.C. sec. 401(2) and (3).

and,

... to provide, establish, change, or abolish **special nonpostal or similar services**.... 39 U.S.C. sec. 404(a)(6).

It is unarguable that the legal implementation and administration of USPS' Zip Code system impacts delivery service nationally. Hence, significant regulatory changes to this system must be in accordance with 39 U.S.C. secs. 3661 (b) and (c) or 5 U.S.C. sec. 605, and must further comply with 5 U.S.C. secs. 603, 604, and 610. The memorandum ZIP CODE BOUNDARY REVIEW PROCESS (Survey Guidelines), wholly corrupts MI PO-410-92-1 by accepting requests for last line of address changes including Zip code from community groups (now the local chapter of the YMCA or even a Brownie troop -- both "community groups" within the language of the Survey Guidelines -- may request a survey from USPS, which thus may force a "postal identity" change upon any community in the nation.) The Survey Guidelines further corrupts MI PO-41-92-1, which restricts requests for Zip Code boundary adjustments to **municipal officials**, by imposing a wholly unregulated voting process (the "survey") upon an often unsuspecting community. The Survey Guidelines are regularly presented to the public as bona fide regulations (misrepresentation) when they are not, being merely operational stratagems. Here, we have a national mail-fraud scheme (surveys are via the mails) forcing businesses to race to comply with wrongfully imposed address changes (**immediately** implemented by those businesses employing USPS' various change-of-address on-line systems). The Survey Guidelines also hint at a vague concept of "postal identity" (a concept not defined anywhere except cursorily in the Survey Guidelines), which USPS suggests may or may not match any municipal or perceived

community boundaries. Thus, a set of falsely promulgated regulations since 1991 has grossly eroded the value of USPS' Zip Code system to the business correspondence of the people, who in many cases are better served (as prescribed in the DMM at A01.2, paragraph d.):

... ZIP Codes may be omitted from pieces mailed by the general public at the single-piece rates for First-Class Mail and Standard Mail (A) and from pieces bearing a simplified address)

by **not** employing Zip codes on their letterhead and envelopes, on their packaging materials and signs, display materials for shows and conventions -- in short on any business materials whose utilization value and shelf-life are compromised by a corrupted system of address identification forced on them -- with callous disregard of the damages thereby imposed -- by USPS.

B. 39 C.F.R., sec. 3001.87. Commission determinations.

If the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service if the complaint involves a matter of rates and fees or mail classification and shall render a public report if the complaint involves **other matters**.

The corruption of Zip Code boundary alignments by illicit external requests for same, the deliberate perversion and corruption of well-established USPS regulations (MI PO-410-92-1) for purposes not legally defined ("postal identity" adjustments to "perceived" community boundaries to conform with the wishes of spokespersons not required to present proofs of authority from any community group), certainly constitute "other matters" important to USPS' fair, effective delivery of Postal Services, complaints about which clearly fall within the purview of the Commission.

C. 39 U.S.C. sec. 403(c):

In providing **services** ... under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

The Survey Guidelines gives unreasonable preference to "community groups" by allowing just them to request surveys related to boundary alignments. And in the implementation of said surveys, USPS may indifferently apply 19th-century voting rules: only property owners may vote, thus excluding all renters and a disproportionate number of blacks, Hispanics, women, voters eighteen to twenty-one -- all **postal customers**, clearly violating 39 U.S.C. sec.403(c) and various constitutional and state laws, as set forth more fully in the Complaint. This, too, is a Postal Service "service" issue which clearly falls within the purview of the Commission.

II. USPS misstates the Complaint, stating,

The issue for Complainants is not that they fail to receive delivery service as before, it is that the mail delivered to them now must bear a different Zip Code and post office designation than in a prior time period.

The post office in fact is the same as before. What has been changed is the "postal identity" of the community, as witnessed by USPS' own Certificate of Service: "Montgomery Village, MD 20886." Complainants did not use this designation in their Complaint; rather, they used "Gaithersburg, MD 20879." Has USPS in writing threatened postal customers in the affected Montgomery Village development area with "delayed mail delivery" if they did not change their (formerly legal) last line of address including Zip

Code? Yes. To businesses, delayed mail means delayed checks, purchase orders, requests-for-quotes, and every sort of business correspondence necessary to the conduct of business. Have many home-based businesses rushed to change their addresses? You bet. Does this sort of intimidation and confrontational posturing endear USPS -- with its corrupted addressing services -- to businesses? Of course not. Is this the sort of national service Congress envisioned for the "basic function" obligation set forth in 39 U.S.C. sec. 401(2) and (3), which would "bind the Nation together through the ... business correspondence of the people...?" Hardly. Rather, the issue for Complainants is that they must now endure a wrongful change of "postal identity" from that of an incorporated city with international standing in the scientific world, to that of an unincorporated development whose name does not even appear on many regional or national maps, making sales assignments, contract negotiations, and other business dealings more difficult -- in addition to the out-of-pocket costs associated with changes to business materials. Do regulations affecting Zip Code boundary realignments based upon identity issues alone affect postal services? Of course. To suggest otherwise would imply that "postal identities" have no value, either to the people or to USPS. But, of course, money is the issue: "Postal identities" are valuable commodities; and the reason Complainants' homeowners association/builder sought a "postal identity" change was to acquire a separate real-estate listing in the Washington Post in order to sell more homes.

III. Moreover, throughout its pleading, attorneys for USPS use the word "service" to mean only "delivery service." However, in many places in title 39 and in C.F.R. 39, it is abundantly clear that "postal services" means the full range of services USPS provides the people, without any limitation whatsoever: "Philatelic services," "special non-postal services," etc. It is especially clear that the word "service" is not the word "services." Philately is a multi-million-dollar operation for USPS. The trade-marked Zip-Code product line, consisting of the NATIONAL FIVE-DIGIT ZIP CODE AND POST OFFICE DIRECTORY and the various on-line counterparts, are commodities bearing address and geographic boundary information which "... lend themselves to a broad variety of other applications, including geographic and demographic utilization." (From the introduction to the Directory.) This is the service application aspect of the five-digit Zip Code as advertised nationally by USPS. The trade-marked Zip-Code product line is also a multi-million-dollar operation for USPS.

IV. Especially telling is USPS' false assertion, page 5:

It is beyond dispute that in formulating (the Act), the Congress did not intend to convey to any entity other than the Postal Service the authority to manage the details of ZIP Code administration or other matters necessary to establish, maintain or refine the mail delivery system. The Complaint thus does not fall within the scope of 39 U.S.C. sec. 3662 or any other grant of jurisdiction to the Postal Rate Commission.

Quite the contrary. Title 39 provides for an eleven-member Board of Governors who are charged by Congress with the supervision of USPS. The Postal Rate Commission is charged by Congress to provide independent moral leadership to USPS and shall sit in judgement on USPS actions which evoke complaints from the

people, render decisions when it deems fit to do so, and forward recommendations to the Board, which (39 U.S.C. sec. 3625(b)) may approve said decisions and **order the decisions placed in effect.** Moreover, if the Commission finds it needs to amend or create any rules, procedures, or regulations to more ably fulfill its responsibility to the people, Congress has empowered it to do so with no recourse by USPS: 39 U.S.C. sec. 3603.

The Postal Rate Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take **any other action they deem necessary** and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this chapter. Such rules, regulations, procedures, and actions **shall not be subject to any change or supervision by the Postal Service.**

It is clear that no service provided by USPS lies beyond the oversight authority of the Commission granted it by Congress, nor is there any refuge USPS may seek which lies beyond the reach of the Commission and through them, of the people.

V. USPS states that the Complaint "...fails to state a claim for which the Commission could grant relief...." Complainants reply that they have requested relief which is provided for at 39 U.S.C. sec. 3625: consideration of their Complaint by the Commission and recommendations sent, if deemed appropriate, to the Board of Governors. It is the latter who would issue orders granting relief. (A public report is also required under 39 C.F.R. sec. 3001.87.)

VI. USPS in a footnote (page 6) indicates something might be amiss which might trigger a "large number of complaints." Complainants' landmark lawsuit will almost certainly not be the last one brought against USPS citing illicit Zip Code matters.

In an earlier footnote (page 3) USPS suggests that "... the attached court orders include findings which provide insights into the merits of the Complaint." Complainants, in their lawsuit, asserted certain constitutional violations which the court found unpersuasive, thus forcing the exhaustion principle of FTCA. The court never issued a ruling on the Survey Guidelines nor on any of the allegations of wrongdoing against USPS. Its dismissal was based not upon the merits of the Complaint but upon purely legal and technical matters. The Commission has in hand a better statement of the Complaint than was possible at the time of the lawsuit, (1) because more facts have since emerged bearing on the issues and, (2) because Complainants have come to a better understanding of the matter. Also, at page 2, USPS states that the court's dismissal of Complaint was based in part on a finding that (USPS') changes to plaintiffs' addresses were made within the scope of its statutory authority. The full ruling reads:

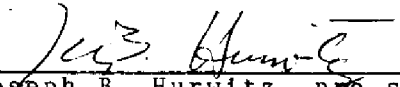
Because the Postal Service was acting within the scope of its statutory authority **when it changed plaintiffs' postal address**, the procedural requirements of the FTCA, including the requirement that claimants exhaust administrative remedies, applies to plaintiffs' claim.

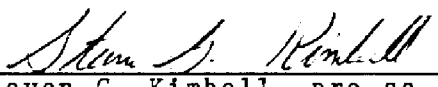
The court simply did not comment on the merits of the complaint once it found against the constitutional claims, nor did it need to (if the court found for the merits of the constitutional claims then FTCA would not apply, and **then** it could rule on the merits). To imply that the court in any way found for USPS in its application of the Survey Guidelines **prior** to the subsequent address changes it made is arrant nonsense.



For the foregoing reasons, Complainants Joseph B. Hurwitz and Steven G. Kimbell, pro se, request that this Honorable Commission deny USPS' Motion to Dismiss and require USPS to file an answer to docketed Complaint No. C99-3 pursuant to 39 C.F.R. sec. 3001.84.

Respectfully submitted,

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CERTIFICATE OF SERVICE

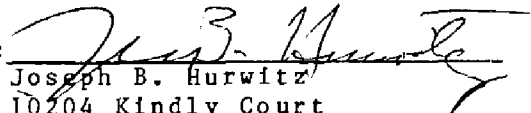
I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day, May 18, 1999, served the foregoing document upon:

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